

Decision: 2026 ME 92
Docket: And-24-525
Argued: April 7, 2026
Decided: August 25, 2026

Panel: STANFILL, C.J., and MEAD, CONNORS, LAWRENCE, and DOUGLAS, JJ.

STATE OF MAINE

v.

ROBERT J. HART

STANFILL, C.J.

[¶1] Robert J. Hart appeals from a judgment of conviction of tampering with a victim (Class B), 17-A M.R.S. § 454(1-B)(A)(2) (2022); domestic violence criminal threatening with a prior conviction for domestic violence (Class C), 17-A M.R.S. § 209-A(1)(B)(1) (2022); and possession of cocaine base (Class C), 17-A M.R.S. § 1107-A(1)(B)(3) (2022),¹ entered by the trial court (Androscoggin County, *Archer, J.*) after a conditional guilty plea. Hart, through counsel, argues that the trial court erred in denying his motions to dismiss the superseding indictment for prosecutorial vindictiveness and to suppress

¹ Several of the statutory provisions relevant to this appeal have been amended since Hart committed the offenses on November 6, 2022. We cite the 2022 Maine Revised Statutes throughout this opinion as the applicable version. *See State v. Shepley*, 2003 ME 70, ¶ 10, 822 A.2d 1147 (explaining that “[a] wrongdoer must be punished pursuant to the law in effect at the time of the offense” (quotation marks omitted)).

certain statements he made without any *Miranda* warnings. Hart personally raises several additional claims of error. Discerning no error, we affirm the judgment.

I. BACKGROUND

[¶2] Because Hart pleaded guilty, we draw the following facts from the record and the State's recitation of the factual basis for the charges against him. *See, e.g., State v. Butterfield*, 2025 ME 57, ¶ 2, 339 A.3d 808.

[¶3] In the early hours of November 6, 2022, the victim, Hart's former partner, called 9-1-1 to report that Hart had threatened to kill her and was banging on the door to her hotel room. A few minutes later, police officers found Hart in the parking lot of a nearby Walmart. While speaking to the officers, Hart sent the victim a series of Facebook messages imploring her to, among other things, tell the police that she had overreacted. The interaction in the parking lot was recorded by the officers' body-worn cameras.

[¶4] Hart was arrested and transported to the Androscoggin County Jail. While Hart was being processed, jail officials found a baggie between his buttocks that contained various drugs, including several grams of cocaine base.

[¶5] On November 7, 2022, the State filed a seven-count complaint against Hart, and in January 2023, an Androscoggin County Grand Jury returned an indictment charging Hart with the following seven counts:

- Count 1: tampering with a victim (Class B), 17-A M.R.S. § 454(1-B)(A)(2);
- Count 2: domestic violence aggravated assault (Class B), 17-A M.R.S. § 208-D(1)(D) (2022);
- Count 3: domestic violence assault (Class C), 17-A M.R.S. § 207-A(1)(B)(1) (2022);
- Count 4: domestic violence terrorizing (Class C), 17-A M.R.S. §§ 210-B(1)(A), 1604(5)(B) (2022);
- Count 5: possession of methamphetamine (Class C), 17-A M.R.S. § 1107-A(1)(B)(7);
- Count 6: possession of cocaine base (Class C), 17-A M.R.S. § 1107-A(1)(B)(3);
- Count 7: possession of cocaine (Class D), 17-A M.R.S. § 1107-A(1)(C).

Hart pleaded not guilty at his arraignment in February 2023.

[¶6] Hart moved to suppress statements he made to law enforcement, the drugs found on him at the county jail, and evidence obtained from his cellphone. At the motion hearing in July 2023, the State agreed to exclude from its case-in-chief all statements that Hart made to law enforcement after the first twelve minutes and five seconds of their interaction in the parking lot. The State also agreed to exclude all evidence from Hart's cellphone. Following the

hearing, the court (*Stewart, J.*) denied Hart’s motions “[e]xcept to the extent that [they had] been partially granted by the State’s conceding.”

[¶7] With trial set to begin on January 22, 2024, the parties selected a jury on January 4, but the panel was not administered the trial oath at that time.² *See* 15 M.R.S. § 1254 (2022) (juror’s oath or affirmation).

[¶8] The trial was continued from January 22 because Hart’s attorney became ill. The following week, the State informed Hart and the court that it intended to obtain a superseding indictment because it had recently learned that the assault alleged in Counts 2 and 3 occurred outside of Androscoggin County. *See* 15 M.R.S. § 1255-A (2022); *State v. Coffill*, 2026 ME 18, ¶¶ 14-15 & n.5, 354 A.3d 355.

[¶9] On February 6, 2024, the State filed a superseding Androscoggin County indictment charging Hart with the following:

- Count 1: tampering with a victim (Class B), 17-A M.R.S. § 454(1-B)(A)(2);
- Count 2: tampering with a victim (Class B), 17-A M.R.S. § 454(1-B)(A)(1);
- Count 3: domestic violence criminal threatening (Class C), 17-A M.R.S. § 209-A(1)(B)(1);
- Count 4: possession of methamphetamine (Class C), 17-A M.R.S. § 1107-A(1)(B)(7);

² Because the jury was not sworn, jeopardy did not attach. *See, e.g., State v. Shirey*, 2020 ME 136, ¶ 7, 242 A.3d 1103; *Martinez v. Illinois*, 572 U.S. 833, 839 (2014).

- Count 5: possession of cocaine base (Class C), 17-A M.R.S. § 1107-A(1)(B)(3);
- Count 6: possession of cocaine (Class D), 17-A M.R.S. § 1107-A(1)(C).

The superseding indictment no longer charged Hart with domestic violence aggravated assault or domestic violence assault. It contained a charge of domestic violence threatening instead of domestic violence terrorizing, and it added a second, alternative charge of tampering with a victim.

[¶10] In March 2024, Hart filed two motions to dismiss the superseding indictment. One of the motions claimed a violation of Hart's right against double jeopardy, and the other alleged prosecutorial vindictiveness in the State's decision to obtain the superseding indictment. Hart also requested discovery and an evidentiary hearing on the claim of prosecutorial vindictiveness. After a hearing, the court (*Archer, J.*) denied Hart's requests for discovery and an evidentiary hearing and each of his motions to dismiss.

[¶11] On October 9, 2024, Hart entered a conditional plea of guilty, with the State's agreement, to Counts 1, 3, and 5 of the superseding indictment. *See* M.R.U. Crim. P. 11(a)(2), 11A. The plea preserved Hart's right to appeal the denial of his motions to suppress and to dismiss the superseding indictment. The State dismissed the remaining charges in exchange for the plea. The court accepted Hart's plea, sentenced him in accordance with the parties' agreement,

and entered judgment accordingly.³ Hart timely appealed. *See* M.R. App. P. 2B(b)(1).

II. DISCUSSION

[¶12] Hart, through counsel, raises two claims of error. With our permission, Hart also personally filed a separate supplemental brief asserting several claims beyond those raised by counsel. We address each argument.

A. Vindictive Prosecution

[¶13] Hart first claims that the court erred in denying his motion to dismiss the superseding indictment for prosecutorial vindictiveness. Specifically, he argues that the State’s filing of the superseding indictment was presumptively vindictive because it followed his exercise of “numerous” pretrial rights, occurred “late in the game” after a jury had been selected, and increased the severity of the charges against him.⁴ Because those

³ On Count 1, the court sentenced Hart to ten years of incarceration, all suspended, and three years of probation. On each of Counts 3 and 5, Hart was sentenced to twenty-seven months of incarceration. The sentence on Count 1 runs consecutively to Hart’s sentence in a Penobscot County case (for which he was on probation when he committed the offenses in this case), while the sentences on Counts 3 and 5 run concurrently with one another and with the Penobscot sentence. The court also imposed a \$400 fine.

⁴ Hart’s supplemental brief lists a series of grievances with the State’s conduct in this case. Because none of them suggest that the State obtained the superseding indictment to retaliate against Hart for exercising a legal right, they do not affect our analysis of his prosecutorial-vindictiveness claim. *See, e.g., United States v. Goodwin*, 457 U.S. 368, 381-84 (1982); *United States v. Bout*, 731 F.3d 233, 239 (2d Cir. 2013) (explaining that a prosecutor’s “enthusiastic or energetic pursuit” of a criminal suspect “does not demonstrate vindictive, or even inappropriate, government conduct”).

circumstances did not give rise to a reasonable likelihood of prosecutorial vindictiveness, we conclude that the trial court properly declined to presume any prosecutorial vindictiveness and thus did not err by denying Hart’s motion to dismiss.

[¶14] The Due Process Clause of the Fourteenth Amendment prohibits the government from acting “vindictively” by punishing a criminal defendant for exercising a legal right.⁵ *See e.g., North Carolina v. Pearce*, 395 U.S. 711, 723-25 (1969) (“Due process of law . . . requires that vindictiveness against a defendant for having successfully attacked his first conviction must play no part in the sentence he receives after a new trial.”), *overruled in part on other grounds by, Alabama v. Smith*, 490 U.S. 794, 802-03 (1989); *Blackledge v. Perry*, 417 U.S. 21, 24-29 (1974) (holding that when state law permits a misdemeanor defendant to have a trial de novo in a court of general jurisdiction, a prosecutor may not punish the defendant for exercising that right by “substituting a more serious charge for the original one”).

⁵ Because Hart has not developed any vindictive-prosecution arguments under the Maine Constitution, this opinion addresses only the U.S. Constitution. *See, e.g., State v. Ellis*, 2025 ME 56, ¶ 7 n.3, 339 A.3d 794; *cf. State v. Violette*, 576 A.2d 1359, 1360-61 (Me. 1990) (addressing a claim of prosecutorial vindictiveness under the state constitution); Thomas C. Bradley, Note, *State v. Violette: Harsher Resentencing Encounters a Bolder Presumption of Vindictiveness*, 43 Me. L. Rev. 523, 530-43 (1991) (discussing *Violette*).

[¶15] Because motives are “complex and difficult to prove,” the U.S. Supreme Court has held that courts should apply a rebuttable presumption of vindictiveness when “action detrimental to the defendant has been taken after the exercise of a legal right” and the circumstances are such that “a reasonable likelihood of vindictiveness exists.”⁶ *United States v. Goodwin*, 457 U.S. 368, 373 (1982); *see Pearce*, 395 U.S. at 725-26, *overruled in part by, Smith*, 490 U.S. at 802-03; *Blackledge*, 417 U.S. at 25-28. When a presumption of vindictiveness is triggered, the government may rebut the presumption by pointing to “objective information” that justifies its action. *Goodwin*, 457 U.S. at 374; *see, e.g., United States v. Villa*, 70 F.4th 704, 710 (4th Cir. 2023); *United States v. Jenkins*, 537 F.3d 1, 3 (1st Cir. 2008).

⁶ Hart, quoting the First Circuit’s decision in *United States v. Peterson*, 233 F.3d 101, 105 (1st Cir. 2000), asserts that a presumption of vindictiveness arises when a defendant “rais[es] a reasonable doubt about the propriety of the prosecution’s motive.” But the *Peterson* decision concerned a claim of selective prosecution, not prosecutorial vindictiveness. *Id.* (citing *United States v. Gary*, 74 F.3d 304, 313 (1st Cir. 1996)). The First Circuit’s vindictive-prosecution decisions indicate that it, like the other federal courts of appeals, requires a defendant to show a “reasonable” or “realistic” likelihood of vindictiveness. *E.g., United States v. Rolfsema*, 468 F.3d 75, 79 (1st Cir. 2006); *United States v. Ward*, 732 F.3d 175, 184 (3d Cir. 2013); *United States v. Villa*, 70 F.4th 704, 710 (4th Cir. 2023); *United States v. Cluff*, 857 F.3d 292, 302 (5th Cir. 2017); *United States v. Robinson*, 809 F.3d 991, 1000-01 (8th Cir. 2016); *United States v. Meadows*, 867 F.3d 1305, 1311 (D.C. Cir. 2017). In any event, “[w]e are not required to follow any lower federal court decision,” *Nadeau v. Twin Rivers Paper Co.*, 2021 ME 16, ¶ 35, 247 A.3d 717, and we independently conclude that the reasonable-likelihood standard best reflects the Supreme Court’s decision in *Goodwin*, 457 U.S. at 373-75, 384.

Hart also suggests that he was entitled to discovery and an evidentiary hearing regarding prosecutorial vindictiveness because he “c[a]me forth with ‘some’ objective evidence tending to show the existence of prosecutorial vindictiveness.” *United States v. Bucci*, 582 F.3d 108, 113 (1st Cir. 2009). Because the facts of this case do not suggest any possibility of prosecutorial vindictiveness, *see infra* ¶¶ 17-20, the court did not err by denying Hart’s evidentiary requests, *see Bucci*, 582 F.3d at 113-14.

[¶16] In *Goodwin*, the Supreme Court drew a distinction between claims of vindictiveness that arise before trial and those that arise after trial and explained that a presumption of vindictiveness will rarely be appropriate in the pretrial context. *Goodwin*, 457 U.S. at 372-84; *see also Bordenkircher v. Hayes*, 434 U.S. 357, 362-65 (1978) (explaining that when a prosecutor “openly presented the defendant with the unpleasant alternatives of forgoing trial or facing charges on which he was plainly subject to prosecution,” there was no due process violation). Before a trial, the prosecutor’s “assessment of the proper extent of prosecution may not have crystallized,” and in preparing for trial, “the prosecutor may uncover additional information that suggests a basis for further prosecution or he simply may come to realize that information possessed by the State has a broader significance.” *Goodwin*, 457 U.S. at 381. Moreover, “a defendant before trial is expected to invoke procedural rights that inevitably impose some ‘burden’ on the prosecutor”—such as motions to suppress evidence, to dismiss an indictment, and to be tried by a jury—and “[i]t is unrealistic to assume that a prosecutor’s probable response to such motions is to seek to penalize and to deter.” *Id.* Accordingly, “a change in [a] charging decision made *after an initial trial is completed* is much more likely to be improperly motivated than is a pretrial decision.” *Id.* (emphasis added).

[¶17] The Court in *Goodwin* held that a presumption of vindictiveness did not arise when a defendant who had been charged with misdemeanor offenses asserted his right to a jury trial and the prosecutor then filed a superseding indictment charging him with a felony. *See id.* at 370-71, 382-84. “The timing of the indictment alone . . . is insufficient” and “vindictiveness cannot be inferred simply because the prosecutor’s actions followed the exercise of a right.” *United States v. Brown*, 875 F.3d 1235, 1240 (9th Cir. 2017) (quotation marks omitted). Instead, a defendant seeking to establish a reasonable likelihood of vindictiveness in the pretrial context “must point to ‘something more’ than an increase in charges that followed the exercise of his constitutional or statutory rights.” *United States v. Allgood*, 610 F. Supp. 3d 239, 249 (D.D.C. 2022) (quoting *United States v. Meadows*, 867 F.3d 1305, 1313 (D.C. Cir. 2017)); accord, e.g., *United States v. Falcon*, 347 F.3d 1000, 1005 (7th Cir. 2003) (“When the government brings additional charges before trial, but after the defendant exercises a procedural right, evidence of suspicious timing alone does not indicate prosecutorial animus.”); *United States v. Barner*, 441 F.3d 1310, 1316 (11th Cir. 2006).

[¶18] Contrary to Hart’s arguments, the circumstances here do not suggest any likelihood of pretrial prosecutorial vindictiveness. Hart did not

exercise any rights that would have been likely to prompt retaliation from the State. Although Hart filed a variety of motions in advance of the scheduled trial, each of them was a ‘routine’ pretrial motion of the kind described in *Goodwin*, and Hart has not provided any reason why the State would have responded to those motions by “seek[ing] to penalize and to deter.” *Goodwin*, 457 U.S. at 381. Moreover, although the State obtained the superseding indictment after Hart had exercised some pretrial rights, nothing suggests that the State obtained the indictment *because* Hart had exercised those rights. *See, e.g., Falcon*, 347 F.3d at 1005 (reiterating that in the pretrial context, “suspicious timing alone does not indicate prosecutorial animus”). In other words, Hart has identified no more than an “increase in charges that followed the exercise of his constitutional or statutory rights,”⁷ and the trial court properly concluded that there was not a reasonable likelihood of vindictiveness. *Allgood*, 610 F. Supp. 3d at 249; *see Goodwin*, 457 U.S. at 381-84.

[¶19] Hart argues that *Goodwin* and its progeny are distinguishable because here the jury had been selected and the trial was just days away when

⁷ Moreover, it is not clear that there was in fact an “increase in charges.” The superseding indictment omitted two charges that were in the original indictment, a Class B domestic violence aggravated assault and a Class C domestic violence assault. Although a Class B victim tampering charge was added, it apparently charged the same act of tampering with a victim under an alternative theory.

the State obtained the superseding indictment, and therefore the State's action was not truly pretrial. This distinction, however, does not make a meaningful difference. Although the *Goodwin* Court referred to "pretrial" action, the distinction it drew was between pre- and post-*conviction* claims of vindictiveness. See *Goodwin*, 457 U.S. at 373-82. The Court emphasized that a defendant's exercise of a pretrial right—as opposed to a postconviction right—neither "require[s] duplicative expenditures of prosecutorial resources" nor asks any party "to do over what it thought it had already done correctly." *Id.* at 383 (quotation marks omitted); see also *id.* at 378 ("[T]he due process violation in *Pearce* and *Blackledge* lay not in the possibility that a defendant might be deterred from the exercise of a legal right but rather in the danger that the State might be retaliating against the accused for lawfully attacking his conviction." (alteration and quotation marks omitted)). Thus, although the State's action here came later than the prosecutor's action in *Goodwin*, the Court's rationale in *Goodwin* applies with equal force here.⁸

⁸ Hart cites two cases for the proposition that late timing is "objectively indicative of vindictiveness." See *United States v. Johnson*, 299 F. Supp. 3d 909, 918 (M.D. Tenn. 2018); *Hampton v. Dist. Ct.*, 605 P.2d 54, 57 (Colo. 1980). Neither of those cases supports Hart's position. In *Johnson*, although the court described the timing of a late-filed superseding indictment as "a bit suspect" in light of specific past history, the court did not apply a presumption because there was nothing—other than the timing—to suggest vindictiveness. *Johnson*, 299 F. Supp. 3d at 918-20. In *Hampton*, the court explained that in the circumstances of that case, the prosecutor's addition of new charges immediately before trial appeared to be a "last minute ploy to circumvent the requirements of the speedy trial provisions," and that the defendant had thus established a "prima facie case of prosecutorial bad faith." *Hampton*, 605 P.2d at 57. But the court made that determination in the

[¶20] The trial court determined that the circumstances here did not “establish a sufficient likelihood of vindictiveness to warrant imposition of [a] presumption.” (Quotation marks omitted.) We agree. Reviewing the court’s legal determinations de novo, *see, e.g., State v. Felch*, 2007 ME 88, ¶ 9, 928 A.2d 1252, we conclude that the court did not err by declining to apply a presumption of vindictiveness or by denying Hart’s motion to dismiss.⁹ *See, e.g., Goodwin*, 457 U.S. at 380-84; *Villa*, 70 F.4th at 710-13; *Barner*, 441 F.3d at 1315-21; *Falcon*, 347 F.3d at 1004-06.

B. Hart’s Statements to Jail Officials

[¶21] Hart also argues that the court erred by “apparently denying [his] motion to suppress [his] statements to jail officials that were made without

context of a speedy trial claim—i.e., a claim that the defendant had forfeited his right to a speedy trial only because of bad-faith conduct on the part of the prosecutor—not a claim of prosecutorial vindictiveness. *See id.* at 56-57.

⁹ Moreover, as the trial court explained, “[e]ven if [Hart] had triggered [a] presumption, . . . the State has rebutted the presumption by showing objective reasons for its actions and the charges.” The court noted that the State had learned only shortly before obtaining the superseding indictment that it could not have sustained Counts 2 and 3 of the original indictment because the alleged assault occurred outside of Androscoggin County. *See supra* ¶¶ 8-9. The court further explained that the State had added the domestic violence threatening charge to the superseding indictment and removed the domestic violence terrorizing charge from the original indictment because recent decisions by this Court and the U.S. Supreme Court had rendered the latter charge constitutionally suspect. *See State v. Labbe*, 2024 ME 15, ¶ 57 n.24, 314 A.3d 162; *Countertermen v. Colorado*, 600 U.S. 66, 72-82 (2023). Thus, even if Hart had pointed to circumstances that reflected a reasonable likelihood of vindictiveness in the State’s decision to obtain the superseding indictment, there was “objective information” in the record justifying the State’s action. *See, e.g., Goodwin*, 457 U.S. at 374; *United States v. Santana*, 352 F. App’x 867, 871 (4th Cir. 2009).

Miranda warnings.” The State asserts that all of those statements were in fact suppressed and that Hart’s claim is misplaced. We agree with the State.

[¶22] At the hearing on Hart’s motions to suppress, the State conceded that “after the 12 minute and 5 second mark [of the body-worn-camera footage], any subsequent conversations with law enforcement . . . should be excluded from the State’s case-in-chief.” The court, both at the hearing and in its written order, denied Hart’s motions “[e]xcept to the extent that [they had] been partially granted by the State’s conceding.” All of Hart’s statements to the jail officials occurred well after the twelve-minute mark of the footage and were thus included in the State’s concession.¹⁰ Because those statements were suppressed, there was no error.

C. Hart’s Additional Arguments

[¶23] Hart personally argues that the superseding indictment should have been dismissed as violating his right against double jeopardy. The federal double jeopardy clause prohibits multiple punishments for the same offense, but it permits the State to “charge[] multiple counts as alternative theories for

¹⁰ Hart seems to argue that the court “apparently” did not suppress his statements to the jail officials because the State briefly referenced some of those statements in its recitation of the factual basis for the charges against him. See M.R.U. Crim. P. 11(e). Nothing the State said at the Rule 11 hearing altered the court’s ruling on the suppression motion, and Hart makes no suggestion that the State’s references rendered his plea invalid or otherwise caused him prejudice.

the same criminal act” as long as any multiplicitous counts are merged before judgment is entered. *State v. Hayward*, 2017 ME 33, ¶ 16, 156 A.3d 734; *accord State v. Armstrong*, 2020 ME 97, ¶¶ 7-11 & n.2, 237 A.3d 185. Thus, even assuming that Hart could not have been convicted of both tampering charges in the superseding indictment, *but see State v. Ali*, 2025 ME 30, ¶¶ 17-24, 334 A.3d 657, there would have been no basis to dismiss the indictment.

[¶24] Hart also argues that the court erred in failing to suppress certain statements that he made in the parking lot after the police asked him to get out of his car. Because the evidence in the record at the suppression hearing supported the court’s determination that Hart was not “in custody” at that time, we discern no error in the court’s partial denial of Hart’s motion to suppress. *See, e.g., State v. Farley*, 2024 ME 52, ¶¶ 21-23 & n.20, 319 A.3d 1080; *State v. Perry*, 2017 ME 74, ¶ 16, 159 A.3d 840; *United States v. Turner*, No. 18-CR-00176, 2019 WL 2870802, at *2, 5-6 (D. Me. July 3, 2019) (Levy, C.J.) (concluding that “merely asking the [d]efendants to exit their vehicle did not automatically render them ‘in custody’ for purposes of *Miranda*” and that the defendants, despite having been patted down and questioned, “were not in custody before they were handcuffed and arrested”).

The entry is:

Judgment affirmed.

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